

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CRIMINAL CASE NO. 3:02cr137**

UNITED STATES OF AMERICA,)
)
)
 vs.)
)
)
 JAMES EDWARD ROSEBORO.)
 _____)

ORDER

THIS MATTER is before the Court on the Defendant's *pro se* "Motion for Modification of Term of Imprisonment; 18 U.S.C. §3582(c)(2); Request for Hearing or Written Findings" [Doc. 35], filed March 12, 2008.

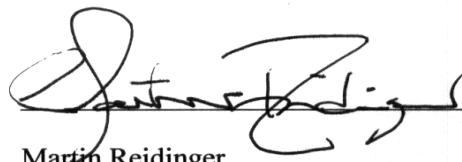
By this Motion, the Defendant seeks reduction of his sentence both because of the amendment to the Sentencing Guidelines relating to cocaine base (Amendment 706) and based on a re-examination of the sentencing factors of 18 U.S.C. §3553(a), citing United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).

By Order entered simultaneously herewith, the undersigned has denied the Defendant's motion for relief pursuant to Amendment 706. This leaves for determination the Defendant's other basis for seeking reduction in his sentence, namely the re-examination of the §3553(a) factors. These

statutory factors and Booker do not apply to the resentencing of a defendant based on the retroactive Sentencing Guideline amendment. The Defendant's argument has been addressed and rejected by the Circuit Court. A resentencing pursuant to §3582(c)(2) because of Amendment 706 is not a full resentencing hearing, but allows only for the application of the amendment. "[Section] 3582(c)(2) and U.S.S.G. §1B1.10 are narrow provisions that allow a limited reduction of sentences by the amount specified in an amendment, while prohibiting a complete reevaluation." United States v. Dunphy, 551 F.3d 247, 252 (4th Cir. 2009), *certiorari denied sub nom Dunphy v. United States*, __ S.Ct. __, 2009 WL 772917 (2009). Since the Defendant is entitled to no relief pursuant to Amendment 706, the Court has no authority to re-examine his sentence to provide relief on any other ground.

IT IS, THEREFORE, ORDERED that Defendant's *pro se* "Motion for Modification of Term of Imprisonment; 18 U.S.C. §3582(c)(2); Request for Hearing or Written Findings" [Doc. 35], is hereby **DENIED** in its entirety.

Signed: May 21, 2009


Martin Reidinger
United States District Judge

